IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 36 OF 2006
IN
COMPANY APPLICATION LODG. NO. 919 OF 2005
IN
COMPANY APPEAL NO. 18 OF 2005
IN
COMPANY PETITION NO. 22 OF 2001

Chandrakant Kantilal Shah & 13 Ors.] .. Appellants (Ori.Petnrs.)

Versus

National Refinery Ltd. & 23 Ors.] .. Respondents (Ori.Respdts.)

Mr. Chandrajeet Chanderpal for the appellants.

Mr. N.H. Seervai i/b M/s. Mulla & Mulla and Cragie Blunt & Caroe for the respondents.

CORAM: R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED: 31ST JANUARY, 2006

P.C. :

. Heard Mr. Chandrajeet Chanderpal learned counsel for the appellants and Mr. N.H. Seervai, the learned counsel for the respondent.

2. In the Company Appeal filed under Section 10F of the Companies Act, the parties consented for the following order:

"By consent of the parties, the following order is passed:-

1. Mr.Justice S.M. Jhunjhunuwalla, the Retired Judge of this Court is appointed as a valuer for evaluating the share of the appellant herein in respect of their holdings in the first respondent company. Mr. Tekariwal & Co. a Chartered Accountant is also appointed to assist the learned Judge in the task of valuation of the said share.

2. The valuer shall before deciding the valuation give opportunity to both the parties to submit their written submissions as well as oral submissions and after taking into consideration the submissions of the parties and the report of the Chartered Accountant appointed, shall make appropriate report pertaining to the valuation of the claim of the appellant herein in the 1st Respondent company.

3. The valuer will give the necessary report within a period of four months from today i.e. on or before 31.7.2005. The report shall also include all directions including payment by the Respondent and executing of necessary documents by the appellant as receipt of payment.

4. All contentions on merits pertaining to valuation of various assets of the Respondent No.1 company are expressly kept open to be advanced by both the parties and valuer should decide the same in accordance with law.

5. The Respondents hereby agree and undertake that till and until the payment is made as reported by the valuer and till further orders passed by the Court, they shall not alienate, encumber or create any third party right or dispose of any of the assets of the 1st Respondent Company except in due course of business.

6. On such valuer report being filed, the Respondents shall deposit in the Court within

> 60 days, the amount quantified by the valuer and the appellant shall deposit in this Court all the transfer deeds/documents which are necessary for the purpose of transferring the shares held by them along with necessary share certificates deposited in this Court to be ultimately executed in favour of the Respondents herein. On such deposit of shares and transfer documents in this Court, the Prothonotary and Senior Master, High Court, Bombay, shall release the payment deposited by the Respondents in conformity of the said valuation report to the appellant herein.
>
> 7. In an event of any default in depositing the amount within 60 days, the Respondents shall be liable to pay interest at the rate of 18% per annum. In an event if the amount is so deposited by the appellants do not deposit the shares and transfer the documents as provided in clause 6 then they will not be entitled to exercise any rights whatsoever in respect of the said shares.
>
> 8. All costs, charges and expenses of the valuer will be shared by the appellants and the respondent in proportion of 25% and 75% respectively and shall be deposited in advance with the valuer.
>
> Appeal is disposed of accordingly. However, there shall be no order as to cost."

3. Pursuant to the aforesaid order, Mr. Justice Jhunjhunuwala (Retd.) proceeded with the evaluation of the share of the appellants in respect of their holdings in the first respondent company and after taking into consideration the entire material placed on record and the written and oral submissions of the parties, submitted the report.

4. The present appellants seem to have not been satisfied with the valuation report and accordingly made an application for the following reliefs:

> "a) This Honourable Court may direct that the execution of the process of valuation in terms of the administrative part of the orders dated 18th March 2005 passed by His Lordship Honourable Justice S.U. Kamdar which pertain to the execution of the process of valuation be stayed and the acceptability of the valuation report dated 12th August 2005 prepared by the Valuation Forum comprising of Justice S.M. Jhunjhunuwala, Former Judge Bombay High Court and M/s. B.L. Tekriwala & Co. Chartered Accountants be stayed until final disposal of this application or such suitable directions be given by this Honourable Court and the respondents be injuncted from selling, disposing, alienating or dealing, except in the ordinary course of business, the 1st Respondent Company's assets until final disposal of this application.
>
> b) This Honourable Court may direct that a Valuation Exercise be once again conducted by the same valuation forum in terms of the pending disputed claims and aspects as pointed out in the submissions made in this application and in independence of the report of the private valuers and Chartered Accountants who have submitted their reports at the instance of the respondents as mentioned in the valuation report, and the inclusion of Vinvish Corporation Pvt. Limited as a subsidiary company.
>
> c) This Honourable Court may direct a Valuation Exercise be once again conducted by a different valuation forum as directed by this Honourable Court, in terms of the pending disputed claims and aspects as pointed out in the submissions made in this application and in independence of the report of the private valuers and Chartered Accountants who have submitted their reports

at the instance of the respondents as mentioned in the valuation report, and the inclusion of Vinvish Corporation Pvt. Limited as a subsidiary company.

d) This Honourable Court may direct that if both parties so consent with respect to a mutually accepted monetary consideration irrespective of the valuation done by the valuation forum and needless to state that the same should be done excluding 20 acres of khari land which has always been with the mentioned minority appellants in terms of titular ownership and possession with the mentioned five appellants.

e) This Honourable Court may direct that alternatively with mutual consent, the minority be allowed to buy the majority."

5. The learned company Judge by the order dated 10th October, 2005, rejected the company application. Aggrieved thereby, the present Appeal has been preferred.

6. The learned company Judge, in the impugned order, observed that it was clear from the consent order that the valuation report was to be accepted by the parties as final as no remedy against the valuation report was provided. Upon careful consideration of the consent order, which we have reproduced above, the observation of the learned company Judge cannot be said to suffer from any error. The consent order does not record any liberty to the parties to challenge the valuation report. As a matter of fact, initially in

paragraph 5 of the consent order, it was recorded that until the report is made as reported by the valuer and till further orders passed by the court, the respondent shall not alienate, encumber or create any third party right or dispose of any assets of the first respondent company except in due course of business, but by way of speaking to the minutes, the expression "and till further orders passed by the court" was deleted. This clearly suggests that the parties agreed to accept the valuation report as final and that is why there was no provision made in the consent order for challenging the valuation report by either of the parties.

7. It is true that in the consent order it is recorded that the valuer shall accord opportunity to both the parties to submit their written submissions as well as oral submissions and all contentions on merits pertaining to the valuation on various assets of the respondent No.1-company were kept open to be advanced by both the parties before the valuer and valuer was directed to decide the same in accordance with law and submit appropriate report accordingly. The fact of the matter is that the parties did not reserve any right to themselves to challenge the correctness of the valuation report. In other words, it can be reasonably inferred from the consent order that the parties consented that

the valuation report shall be final and binding on the parties.

8. In this situation, the application made by the appellants challenging the correctness of the valuation report was misconceived and rightly not entertained by the learned company Judge.

9. There is yet another reason for not entertaining the Appeal. We are informed that the matter has been worked out as per the consent order inasmuch as upon submission of the report, the respondents deposited the amount as quantified by the valuer within 60 days on the report on 5th October, 2005. The present appellants deposited the transfer deeds/documents for the purpose of transferring the shares held by them along with necessary share certificates by in court on 26th October, 2005 and 22nd November, 2005 (within extended time). The respondents have transferred the documents and withdrawn the amount also as per clause 6 of the consent order.

10. For all these reasons, Appeal is dismissed in limine.

. Certified copy expedited.

Sd/-
[R.M. LODHA, J.]

Sd/-
[ANOOP V. MOHTA, J.]